BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

CHAD D. RIDNOUR Claimant	)	
VS.	)	
KENNETH R. JOHNSON, INC. Respondent	)	Docket No. 1,001,608
AND	)	
GENERAL CASUALTY OF WI Insurance Carrier	)	

ORDER

Respondent requested review of the August 27, 2004 Award by Administrative Law Judge Steven J. Howard. The Board heard oral argument on February 1, 2005.

APPEARANCES

J. Scott Gordon of Overland Park, Kansas, appeared for the claimant. Timothy G. Lutz of Overland Park, Kansas, appeared for respondent and its insurance carrier.

RECORD AND STIPULATIONS

The Board has considered the record and adopted the stipulations listed in the Award.

ISSUES

The claimant had arrived at work and discovered he had forgotten the keys to open a warehouse so his work crew could start work. Claimant returned to his residence, got the keys and was injured in a vehicular accident on his way back to the work site. The Administrative Law Judge (ALJ) determined claimant suffered accidental injury arising out

of and in the course of his employment and as a result suffered a 40 percent functional impairment.[1]

The respondent requests review of whether the claimant's accidental injury arose out of and in the course of employment. Respondent argues the claimant was on his way to assume the duties of his employment at the time of the accident, therefore the "going and coming" rule is applicable and claimant's accident did not arise out of and in the course of employment. In the alternative, if the claim is determined to be compensable, the respondent stipulated claimant suffered a 40 percent whole person functional impairment and argues K.S.A. 44-510f limits a functional impairment only award to a $50,000 maximum. Consequently, respondent argues the ALJ erred in awarding claimant more than the maximum amount allowable. Lastly, respondent requests that any award of medical compensation should be subject to the medical fee schedule.

Claimant contends he was on a special errand for the benefit of his employer when the accident occurred. Consequently, claimant argues the "going and coming" rule is inapplicable to the facts. In the alternative, claimant argues his activities were within exceptions to the "going and coming" rule because he was continuously on call and his trip furthered the business interests of his employer. Accordingly, claimant concludes the accident arose out of and in the course of employment and the ALJ's Award should be affirmed.

At oral argument to the Board, the claimant argued that K.S.A. 44-510f did not apply. And that because claimant suffered an amputation of his leg he was entitled to a monetary award in an amount greater than the $50,000 maximum. However, claimant conceded that this issue was not raised before the ALJ and further conceded that in his submission brief to the ALJ he stipulated that he suffered a 40 percent permanent partial whole body functional impairment as a result of the accident.[2]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board makes the following findings of fact and conclusions of law:

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[1] The award computation paragraph contains a typographical error stating claimant suffered a 40 percent work disability. But the parties stipulated and agreed that the award was for a functional impairment only.

[2] The sole evidence regarding the percentage of claimant's functional impairment was provided by the court ordered independent medical report of Dr. Terrence Pratt. Dr. Pratt concluded that as a result of claimant's multiple injuries he suffered a 40 percent whole person functional impairment.

The claimant had arranged for his work crew to start work early on the morning of August 15, 2001. The crew was to arrive for work at 7a.m. instead of the usual 8 a.m. starting time. Claimant arrived at the work site at approximately 7:05 a.m. As he was walking from the parking lot to the door, he picked up the Wall Street Journal to place on his boss' desk. But when he got to the door, he discovered that he did not have the keys needed to let his crew into the building to start work. Two members of claimant's three member crew were waiting at the door to enter the building and begin work. Claimant told the two men that he was going back to his house to get the key to the building.

The claimant testified that because the crew was paid starting at 7 a.m. that day he felt he needed to get the keys so they could enter the building and start working. Three other employees have keys to open the building and claimant agreed he could have waited for one of them to show up and open the doors. However, claimant felt it was his responsibility and duty to open the warehouse because he had arranged for his crew to be at work earlier than usual. And claimant had no idea when the other employees that had keys to open the business would arrive.

Claimant testified that it typically took just less than 15 minutes to get from his house to the work site. Claimant returned home, got the keys he needed, and started his return trip to the work site. Claimant was riding his motorcycle on his normal route to work when he was in the vehicular accident which claimant testified occurred at approximately 7:30 a.m. Claimant does not recall the details of the accident. Claimant could not explain why the police report indicated the accident occurred at 7:51 a.m.

It was agreed by the parties that Mike Born would testify that he normally arrived at respondent's business location at 7:45 a.m. and that was the time he recalled arriving at work on August 15, 2001.

John McQueeney, respondent's president, testified that his company is an industrial supply company primarily specializing in hydraulic fittings, adaptors and hoses. Claimant was employed as a warehouse manager. Mr. McQueeney considered claimant to be on duty when he was physically inside the building when he got to work in the morning. But claimant is a salaried employee and was not required to clock in and out of work. Mr. McQueeney agreed claimant had the authority to run business errands during the workday as well as send members of his crew to run errands or pick up parts.

Mr. McQueeney relied on Mike Born to open the business in the morning and that was not one of the claimant's primary job duties although claimant would sometimes open the building. Claimant's normal workday was from 8 a.m. to 5 p.m. but on occasions he would arrive at work earlier or stay later.

Mr. McQueeney agreed that the claimant's crew would have gone on the clock at 7 a.m. and be paid for that time even though they could not get into the building to begin work. Mr. McQueeney would have wanted claimant to be at the building when it opened so claimant could direct the work of his crew. But he would have wanted the employees to get into the building to begin work as soon as possible.

Claimant returned to the same job at the same base salary after his accident. Therefore, claimant is not requesting a work disability and the parties stipulated in their submission briefs to the ALJ that claimant suffered a 40 percent permanent partial whole person functional impairment.

Only those accidents that arise out of and in the course of employment are compensable under the Workers Compensation Act.[3] For an accident to arise out of employment, there must be a causal connection between the accident and the nature, conditions, obligations, or incidents of the employment.[4] The requirement that the accident occur in the course of employment relates to the time, place, and circumstances under which the accident occurred and means the accident happened while the worker was working for the employer.[5] In *Newman*, the Kansas Supreme Court held:

> The two phrases, arising 'out of' and 'in the course of' the employment, as used in our workmen's compensation act (K.S.A. 1972 Supp. 44-501), have separate and distinct meanings, they are conjunctive and each condition must exist before compensation is allowable. The phrase 'in the course of' employment relates to the time, place and circumstances under which the accident occurred, and means the injury happened while the workman was at work in his employer's service. The phrase 'out of' the employment points to the cause or origin of the accident and requires some causal connection between the accidental injury and the employment. An injury arises 'out of' employment when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. An injury arises 'out of' employment if it arises out of the nature, conditions, obligations and incidents of the employment.[6]

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[3] See K.S.A. 44-501.

[4] See *Newman v. Bennett*, 212 Kan. 562, 512 P.2d 497 (1973); *Martin v. U.S.D. No. 233*, 5 Kan. App. 2d 298, 615 P.2d 168 (1980); and *Hensley v. Carl Graham Glass*, 226 Kan. 256, 597 P.2d 641 (1979).

[5] See *Hormann v. New Hampshire Ins. Co.*, 236 Kan. 190, 197, 198, 689 P.2d 837 (1984).

[6] *Newman*, 212 Kan. 562 at Syl. ¶ 1.

Whether an accident arises out of and in the course of a worker's employment depends upon the facts peculiar to the particular case.[7]

Employer-directed errands have long been recognized as an exception to the "going and coming" rule. Virtually every jurisdiction which has considered employer-directed errands have found injuries to be compensable if an employee is injured while on an errand or some special mission for the employer.

> Where harm occurs to an employee while he is off the premises of his employer, but while engaged on an errand, or a special mission or duty, in his service, the harm may be compensable; where an employee is injured at a place which he went pursuant to the employer's instructions, the mere fact that such place is not the employee's usual place of employment is not controlling. Where an employee is on a special mission for his employer, he is covered by the act from the beginning of the mission to the end of the return journey.[8]

The Kansas Court of Appeals has also held the going and coming rule does not preclude an injured worker from recovering workers compensation benefits when the travel was an incident of the employment. Under the incident of employment exception to the going and coming rule, injuries incurred while going and coming from places where work-related tasks occur can be compensable where the travel is required in order to complete a special work-related errand or special-purpose trip in the scope of employment.[9]

The claimant arrived at the work site and discovered that he had forgotten to bring the keys necessary to get into the building and begin work. It is undisputed claimant had the authority to run business errands or send his employees on such errands. Because his crew had arrived early and were being paid claimant felt it was his duty to get the keys so he could get his crew into the building to work. The only reason claimant returned home was to get the keys to the building so he could open it for his crew that had arrived at work early that day. The sole purpose of the trip was clearly a business errand.

The claimant agreed he could have waited for one of the three other co-workers who had keys to the building, but claimant did not know when they would arrive and concluded he could get home and back before the others arrived. Although in hindsight, this decision may not have been correct, it does not change the business related nature of claimant's trip home.

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[7] *Id*. at Syl. ¶ 3, citing *Carter v. Alpha Kappa Lambda Fraternity*, 197 Kan. 374, 417 P.2d 137 (1966).

[8] 99 C.J.S. *Workers' Compensation* § 231.

[9] *Brobst v. Brighton Place North*, 24 Kan. App. 2d 766, Syl. ¶ 3, 955 P.2d 1315 (1997).

The Board is mindful that the owner indicated he would have told claimant to wait until someone with keys arrived to open the building. But this opinion was based upon the assumption that the round trip could not have been made before someone with a key arrived. And the owner agreed that he would have wanted the crew to enter the building as soon as possible to begin work. That is the same assumption the claimant acted on when he decided to return home and get the keys to the building. Again, in hindsight the decision to return home and get the keys might have been faulty but that does not change the business nature of the trip. The sole purpose of claimant's trip was a business errand and it is conceded the claimant had authority to run such errands. The Board concludes claimant's accidental injury arose out of and in the course of his employment.

The ALJ entered an award for a 40 percent permanent partial whole person functional impairment as stipulated by the parties in their submission letters. That calculated to an award of $69,222. Respondent argues that an award for functional impairment only is limited to $50,000. The Board agrees.

K.S.A. 44-510f(a) states in part:

> Notwithstanding any provision of the workers compensation act to the contrary, the maximum compensation benefits payable by an employer shall not exceed the following: . . . (4) for permanent partial disability, where functional impairment only is awarded, $50,000 for an injury or aggravation thereof.

K.S.A. 44-510f(a)(4) awards a $50,000 maximum for permanent partial disability where functional impairment only is awarded. As claimant's allegations in this matter did not include a work disability, but are limited to a functional impairment, the $50,000 limit would apply. Both parties stipulated in their submission letters to the ALJ that claimant had suffered a 40 percent permanent partial whole person functional impairment. The maximum is reached based upon the stipulated percentage of functional impairment, therefore, under the statue, the claimant is awarded $50,000 in this matter.

Subject to the fee schedule, claimant is entitled to payment or reimbursement of his related medical treatment and out-of-pocket expenses.[10]

AWARD

WHEREFORE, it is the finding of the Board that the Award of Administrative Law Judge Steven J. Howard dated August 27, 2004, is modified to reflect that pursuant to

[10] K.S.A. 2002 Supp. 44-510i.

K.S.A. 44-510f(a)(4) the claimant's permanent partial disability award is limited to $50,000 and is affirmed in all other respects.

IT IS SO ORDERED.

Dated this _____ day of February 2005.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: J. Scott Gordon, Attorney for Claimant
Timothy G. Lutz, Attorney for Respondent and its Insurance Carrier
Steven J. Howard, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director